STATE OF MICHIGAN

COURT OF APPEALS

LEXUS FINANCIAL SERVICES, INC.

Plaintiff/Counter-defendant/Appellee,

v

TROMBLY TINDALL, P.C.,

Defendant/Counter-plaintiff,

MICHAEL E. TINDALL,

Defendant/Counter-plaintiff/Appellant,

v

CITY OF HARPER WOODS and HARPER WOODS POLICE DEPARTMENT,

Defendants.

FOR PUBLICATION
March 30, 2004
9:05 a.m.

No. 243472
Wayne Circuit Court
LC No. 02-218597-PD

Updated Copy
June 18, 2004

Before: Cooper, P.J., and O'Connell and Fort Hood, JJ.

O'CONNELL, J.

Appellant Michael Tindall challenges the trial court's determination that his claim against appellee Lexus Financial Services, Inc., should go to arbitration. We reverse in part and affirm in part.

Appellant argues that he never signed an arbitration agreement with Lexus, so his claim belongs in the circuit court. We agree. We recognize that the trial court's order effectively granted summary disposition based on MCR 2.116(C)(7). Therefore, we review de novo this and the other legal questions presented. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

Appellant's law firm signed a lease for a Lexus vehicle, and the lease included an agreement to arbitrate. The firm defaulted on payments and Lexus repossessed the vehicle with the help of the police and notwithstanding appellant's desperate and clumsy attempt to keep it in his possession. When Lexus sued the firm for payments owed, appellant personally countersued, alleging that Lexus violated his constitutional rights. Appellant then moved to send Lexus's claims to arbitration pursuant to the lease, but refused to arbitrate his counterclaims. When the trial court gave him the choice of having all the claims either tried or arbitrated, appellant agreed to arbitration. Appellant also accepted the car in return for his firm placing in escrow overdue payments and future payments as they became due. He now appeals the court's decision that he must arbitrate his personal claims together with his firm's claims.

When parties have agreed to settle their disputes through federal arbitration, federal policy requires trial courts to compel arbitration and dismiss all arbitrable claims. *Kauffman v Chicago Corp*, 187 Mich App 284, 287, 292; 466 NW2d 726 (1991). A court may only compel arbitration, however, when the parties have expressly agreed to arbitrate their dispute. *Horn v Cooke*, 118 Mich App 740, 744; 325 NW2d 558 (1982). While appellant eventually agreed to arbitrate his claims, it was only when faced with the Hobson's choice of either arbitrating all the claims or trying all the claims, and neither of those options would have been proper. Because we do not find a binding agreement between Lexus and appellant to arbitrate, appellant's personal claims will remain in the trial court. His firm's claims, as well as Lexus's, will go to federal arbitration. While we recognize that appellant's claims, if they possess any legal merit, may be theoretically resolved by the result of the underlying arbitration, the arbitrator's decision alone might not resolve appellant's claims and cannot legally bind him. *Horn, supra*. Therefore, we must reverse the portion of the trial court's order that sent appellant's personal claims to arbitration.

We will not disturb, however, the trial court's equitable attempt to maintain the status quo by establishing an escrow account pending the arbitrator's decision. Trombly Tindall, P.C., abandoned its challenge to this escrow order by failing to brief the issue.[1]

We also note that appellant's constitutional claims appear to be spurious, and we recommend that the trial court scrutinize them for any merit. If they lack merit, we suggest dismissing them completely and considering sanctions that would properly deter such an abuse of the court's resources and a waste of its time. Sanctions against appellant might also include an appropriate monetary amount that would deter him from abusing the "seven-day rule" by submitting orders that fail to comport in good faith with the court's verbal instructions. We make

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[1] The dissent has requested publication of this opinion in order to address the bankruptcy/standing issue. We believe the issue may have merit; unfortunately, the issue was not raised or decided in the lower court nor was it raised in the briefs or at oral argument. Under these facts, we decline to address an issue that has not been briefed. After adequate briefing, the parties may address this issue on remand.

no decision on the propriety of these actions, leaving that determination to the trial court, which has become most familiar with appellant and his legal tactics.

Reversed in part, affirmed in part, and remanded for disposition consistent with this opinion. We do not retain jurisdiction.

Fort Hood, J., concurred.

/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood